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OFFICE OF PETITIONS

ACCENTURE/FINNEGAN,
HENDERSON
FARABOW GARRETT & DUNNER LLP
901 NEW YORK AVENUE
WASHINGTON DC 20001-4413

In re Application of	:
Sloan, et al.	:
Application No. 09/930,786	:
Filed: August 15, 2001	:
Attorney Docket Number: 10761.0304-01	:
	ON REQUEST FOR
	RECONSIDERATION OF
	PATENT TERM ADJUSTMENT

This is a decision on the petition under 37 CFR 1.705(b), filed July 14, 2010. Applicants believe that they should be accorded an additional PTA of 485 days. Applicants request this correction in part due to the fact that the Office will take in excess of three years to issue this patent.

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment solely as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is **DISMISSED as PREMATURE.**

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent under 37 CFR 1.705(b) based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Rather than file a request for reconsideration of patent term adjustment under 37 CFR 1.705(b) contesting the 37 CFR 1.702(b) calculation at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

However, Applicants point out that additional PTO and Applicant delay should have been assessed. Applicants filed an RCE on September 12, 2005. However, the Office did not mail a response until October 31, 2007. Accordingly, PTO delay of 657 days should have been accorded pursuant to 37 CFR 1.702(a)(2). In addition, Applicants should have been assessed additional delay pursuant to 37 CFR 1.704(c)(8). Subsequent to filing the RCE, Applicants filed multiple Information Disclosure Statements, the last one on March 23, 2007. As such, 557 days of Applicant delay should have been assessed for filing these supplemental papers.

In addition, a review of the file reveals that Applicants should have been assessed additional delay on three separate occasions pursuant to 37 CFR 1.704(c)(10). The Office first mailed a Notice of Allowance on June 24, 2009. In response, Applicants filed an RCE on September 23, 2009. The Office mailed a subsequent Notice of Allowance on November 12, 2009. Accordingly, pursuant to 37 CFR 1.704(c)(10), 51 days of Applicant delay should have been assessed. In response to the November 12, 2009 Notice of Allowance, Applicants again filed an RCE on February 1, 2010. The Office mailed a subsequent Notice of Allowance on February 19, 2010. Accordingly, pursuant to 37 CFR 1.704(c)(10), 19 days of Applicant delay should have been assessed. Finally, Applicants filed yet another RCE (in response to the February 19, 2010 Notice of Allowance) on March 24, 2010. The Office mailed a subsequent Notice of Allowance on April 19, 2010. Accordingly, pursuant to 37 CFR 1.704(c)(10), 27 days of Applicant delay should have been assessed.

In view thereof, the correct determination of PTA prior to issuance is **three hundred twenty-nine (329) days** (1094 (429+8+657) days of PTO delay, reduced by 765(75+35+1+557+51+19+27) days of Applicant delay).

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Cliff Congo at (571) 272-3207.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is positioned above the printed name.

Anthony Knight
Director
Office of Petitions

Enc: copy of PAIR screen



Patent Term Adjustments



PTA/PTC Information Patent Term Adjustment Patent Term Extension

Application Number*: 09930786 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 09930786

Application Filing Date	08/15/2001	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays:	437
A Delays	437	PTO Manual Adjustment	3
B Delays	0	Applicant Delay (APPL)	111
C Delays	0	Total PTA (days)	329

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
200	09/25/2010		P028	Adjustment of PTA Calculation by PTO		552	0
199	09/25/2010		P028	Adjustment of PTA Calculation by PTO			0
182	04/19/2010		MN/-	Mail Notice of Allowance			0
181	04/14/2010		IREV	Issue Revision Completed			0
180	04/14/2010		DVER	Document Verification			0
179	04/14/2010		N/-	Notice of Allowance Data Verification Completed			0
178	04/12/2010		EXLA	Examiner's Amendment Communication			0
177	04/12/2010		CNTA	Notice of Allowability			0
170	03/26/2010		ABN9	Disposal for a RCE / CPA / R129			0
174	03/24/2010		IDSC	Information Disclosure Statement considered			0
173	03/24/2010		MS44	Information Disclosure Statement (IDS) Filed			0
172	03/24/2010		RCAP	Reference capture on IDS			0
171	03/24/2010		RCEX	Request for Continued Examination (RCE)			0
169	03/24/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
168	03/24/2010		BRCE	Workflow - Request for RCE - Begin			0
167	02/22/2010		EIDC	Export to Initial Data Capture			0
166	02/19/2010		ELC_RVW	Electronic Review			0
165	02/19/2010		EML_NTR	Email Notification			0
164	02/19/2010		EML_NTF	Email Notification			0
163	02/19/2010		MEXLA	Mail Examiner's Amendment			0
162	02/19/2010		MN/-	Mail Notice of Allowance			0
161	02/12/2010		IREV	Issue Revision Completed			0
160	02/12/2010		N/-	Notice of Allowance Data Verification Completed			0
159	02/12/2010		DVER	Document Verification			0
158	02/12/2010		EXLA	Examiner's Amendment Communication			0
157	02/12/2010		CNTA	Notice of Allowability			0
150	02/05/2010		ABN9	Disposal for a RCE / CPA / R129			0
154	02/01/2010		IDSC	Information Disclosure Statement considered			0
153	02/01/2010		RCAP	Reference capture on IDS			0
152	02/01/2010		MS44	Information Disclosure Statement (IDS) Filed			0
151	02/01/2010		RCEX	Request for Continued Examination (RCE)			0
149	02/01/2010		WIDS	Information Disclosure Statement (IDS) Filed			0
148	02/01/2010		BRCE	Workflow - Request for RCE - Begin			0
147	11/13/2009		EIDC	Export to Initial Data Capture			0
146	11/12/2009		ELC_RVW	Electronic Review			0
145	11/12/2009		EML_NTR	Email Notification			0
144	11/12/2009		EML_NTF	Email Notification			0
143	11/12/2009		MEXLA	Mail Examiner's Amendment			0
142	11/12/2009		MN/-	Mail Notice of Allowance			0
141	11/07/2009		IREV	Issue Revision Completed			0
140	11/07/2009		DVER	Document Verification			0
139	11/07/2009		N/-	Notice of Allowance Data Verification Completed			0
138	10/24/2009		EXLA	Examiner's Amendment Communication			0
137	10/24/2009		CNTA	Notice of Allowability			0
132	10/06/2009		DOCK	Case Docketed to Examiner In GAU			0
131	09/29/2009		FIDC	Finished Initial Data Capture			0
128	09/26/2009		FWDX	Date Forwarded to Examiner			0
126	09/26/2009		ABN9	Disposal for a RCE / CPA / R129			0
123	09/23/2009		IDSC	Information Disclosure Statement considered			0
130	09/23/2009		RCAP	Reference capture on IDS			0
129	09/23/2009		MS44	Information Disclosure Statement (IDS) Filed			0
127	09/23/2009		RCEX	Request for Continued Examination (RCE)			0
125	09/23/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
124	09/23/2009		BRCE	Workflow - Request for RCE - Begin			0
123	06/29/2009		EIDC	Export to Initial Data Capture			0
122	06/24/2009		MEXLA	Mail Examiner's Amendment			0
121	06/24/2009		MN/-	Mail Notice of Allowance			0
120	06/22/2009		IREV	Issue Revision Completed			0
119	06/20/2009		ACRE	Allowed Case Returned to the Examiner for Clerical Processing			0
118	06/20/2009		DVER	Document Verification			0
117	06/20/2009		N/-	Notice of Allowance Data Verification Completed			0
116	06/20/2009		DOCK	Case Docketed to Examiner In GAU			0
114	06/19/2009		EXLA	Examiner's Amendment Communication			0
113	06/19/2009		CNTA	Notice of Allowability			0
115	06/18/2009		EXIM	Examiner Interview Summary Record (PTOL - 413)			0
109	04/09/2009		PA..	Change in Power of Attorney (May Include Associate POA)			0
108	04/07/2009		CAD	Correspondence Address Change			0
106	04/07/2009		FWDX	Date Forwarded to Examiner			0
107	03/18/2009		C614	New or Additional Drawing Filed			0
105	03/18/2009		AQU	Response after Ex Parte Quayle Action			0
104	02/03/2009		MCTEQ	Mail Ex Parte Quayle Action (PTOL - 326)			0
103	02/02/2009		CTEQ	Ex Parte Quayle Action			0
101	11/25/2008		FWDX	Date Forwarded to Examiner			0
100	10/14/2008		A..	Response after Non-Final Action			0
102	08/04/2008		IDSC	Information Disclosure Statement considered			0
99	08/04/2008		MS44	Information Disclosure Statement (IDS) Filed			0
96	08/04/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
95	07/25/2008		MCTNF	Mail Non-Final Rejection			0
94	07/21/2008		CTNF	Non-Final Rejection			0
90	05/17/2008		FWDX	Date Forwarded to Examiner			0
88	05/17/2008		FWDX	Date Forwarded to Examiner			0
86	05/17/2008		ABN9	Disposal for a RCE / CPA / R129			0
93	05/07/2008		IDSC	Information Disclosure Statement considered			0
92	05/07/2008		RCAP	Reference capture on IDS			0
91	05/07/2008	05/07/2008	MS44	Information Disclosure Statement (IDS) Filed			87
89	05/07/2008		AMPR	RCE - AF Processed			0
87	05/07/2008		RCEX	Request for Continued Examination (RCE)			0
85	05/07/2008		WIDS	Information Disclosure Statement (IDS) Filed			0

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